

### § 1200.3

Federal Register Act, approved July 26, 1935 (44 U.S.C. 1501-1511), and acts supplementing and amending it.

(g) The term *hearing* means that part of the proceeding which involves the submission of evidence.

(h) The term *order* means any order or plan or any amendment to it which may be issued pursuant to the Act.

(i) The term *proceeding* means a proceeding forming the basis on which an order may be issued.

(j) The term *hearing clerk* means the hearing clerk, U.S. Department of Agriculture, Washington, DC.

(k) The term *board* means the board or council established by the order to administer the program.

[47 FR 44684, Oct. 8, 1982, as amended at 52 FR 12899, Apr. 20, 1987]

### § 1200.3 Proposals.

(a) An order may be proposed by any organization certified pursuant to the Act or any interested person affected by the Act, including the Secretary. Any person or organization other than the Secretary proposing an order shall file with the Administrator a written application, together with a copy of the proposal, requesting the Secretary to hold a hearing upon the proposal. Upon receipt of such proposal, the Administrator shall cause such investigation to be made and such consideration to be given as, in the Administrator's opinion, are warranted. If the investigation and consideration lead the Administrator to conclude that the proposed order will not tend to effectuate the declared policy of the Act, or that for other proper reasons a hearing should not be held on the proposal, the Administrator shall deny the application, and promptly notify the applicant of such denial, which notice shall be accompanied by a brief statement of the grounds for the denial.

(b) If the investigation and consideration lead the Administrator to conclude that the proposed order will tend to effectuate the declared policy of the Act, or if the Secretary desires to propose an order, the Administrator shall sign and cause to be served a notice of hearing, as provided herein.

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### § 1200.4 Reimbursement of Secretary's expenses.

If provided for in the Act or any amendment thereto, expenses incurred by the Secretary in preparing or amending the order, administering the order, and conducting the referendum shall be reimbursed.

### § 1200.5 Institution of proceedings.

(a) *Filing and contents of the notice of hearing.* The proceeding shall be instituted by filing the notice of hearing with the hearing clerk. The notice of hearing shall contain a reference to the authority under which the order is proposed; shall define the scope of the hearing as specifically as may be practicable; shall contain either the terms or substance of the proposed order or a description of the subjects and issues involved; and shall state the time and place of such hearing, and the place where copies of such proposed order may be obtained or examined. The time of the hearing shall not be less than 15 days after the date of publication of the notice in the FEDERAL REGISTER, as provided herein, unless the Administrator shall determine that an emergency exists which requires a shorter period of notice, in which case the period of notice shall be that which the Administrator may determine to be reasonable in the circumstances: Except that in the case of hearings on amendments to an order, the time of the hearing may be less than 15 days but shall not be less than three days after the date of publication in the FEDERAL REGISTER.

(b) *Giving notice of hearing and supplemental publicity.* (1) The Administrator shall give or cause to be given notice of hearing in the following manner:

(i) By publication of the notice of hearing in the FEDERAL REGISTER;

(ii) By mailing a copy of the notice of hearing to each organization known by the Administrator to be interested therein;

(iii) By issuing a press release containing the complete text or a summary of the contents of the notice of hearing and making the same available to such newspapers as, in the Administrator's discretion, are best calculated to bring the notice to the attention of the persons interested therein; and

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(iv) By forwarding copies of the notice of hearing addressed to those Governors of the States and executive heads of territories and possessions of the United States and the mayor of the District of Columbia that are directly affected by such order.

(2) Legal notice of the hearing shall be deemed to be given if notice is given in the manner provided by paragraph (b)(1)(i) of this section; failure to give notice in the manner provided in paragraphs (b)(2) (ii), (iii), and (iv) of this section shall not affect the legality of the notice.

(c) *Record of notice and supplemental publicity.* There shall be filed with the hearing clerk or submitted to the judge at the hearing an affidavit or certificate of the person giving the notice provided in paragraphs (b)(1) (iii) and (iv) of this section. In regard to the provisions relating to mailing in paragraph (b)(1)(ii) of this section, determination by the Administrator that such provisions have been complied with shall be filed with the hearing clerk or submitted to the judge at the hearing. In the alternative, if notice is not given in the manner provided in paragraphs (b)(1) (ii), (iii), and (iv) of this section there shall be filed with the hearing clerk or submitted to the judge at the hearing a determination by the Administrator that such notice is impracticable, unnecessary, or contrary to the public interest with a brief statement of the reasons for such determination. Determinations by the Administrator as herein provided shall be final.

### § 1200.6 Docket number.

Each proceeding, immediately following its institution, shall be assigned a docket number by the hearing clerk and thereafter the proceeding may be referred to by such number.

### § 1200.7 Judge.

(a) *Assignment.* No judge who has any pecuniary interest in the outcome of a proceeding shall serve as judge in such proceeding.

(b) *Power of judge.* Subject to review by the Secretary, as provided elsewhere in this subpart, the judge in any proceeding shall have power to:

(1) Rule upon motions and requests;

(2) Change the time and place of hearings, and adjourn the hearing from time to time or from place to place;

(3) Administer oaths and affirmations and take affidavits;

(4) Examine and cross-examine witnesses and receive evidence;

(5) Admit or exclude evidence;

(6) Hear oral argument on facts or law; and

(7) Do all acts and take all measures necessary for the maintenance of order at the hearings and the efficient conduct of the proceeding.

(c) *Who may act in absence of judge.* In case of the absence of the judge or the judge's inability to act, the powers and duties to be performed by the judge under this part in connection with a proceeding may, without abatement of the proceeding unless otherwise ordered by the Secretary, be assigned to any other judge.

(d) *Disqualification of judge.* The judge may at any time withdraw as judge in a proceeding if such judge deems himself or herself to be disqualified. Upon the filing by an interested person in good faith of a timely and sufficient affidavit of personal bias or disqualification of a judge, the Secretary shall determine the matter as a part of the record and decision in the proceeding, after making such investigation or holding such hearings, or both, as the Secretary may deem appropriate in the circumstances.

### § 1200.8 Motions and requests.

(a) *General.* (1) All motions and requests shall be filed with the hearing clerk, except that those made during the course of the hearing may be filed with the judge or may be stated orally and made a part of the transcript.

(2) Except as provided in §1200.17(b) such motions and requests shall be addressed to, and ruled on by, the judge if made prior to certification of the transcript pursuant to §1200.11 or by the Secretary if made thereafter.

(b) *Certification to Secretary.* The judge may, in his or her discretion, submit or certify to the Secretary for decision any motion, request, objection, or other question addressed to the judge.